

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

Bail Appl..No. 4819 of 2007()

CMP.2559/2007 of DISTRICT COURT, PALAKKAD
[CRIME NO.146/2007 OF WALAYAR POLICE STATION]
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PETITIONER

MANIKANDAN, S/O. RAMAKRISHNAN,
AGED 34 YEARS, THALAPPALAM, MUKKARONI,
KANJIKODE, PALAKKAD.

BY ADV. SRI.K.MANOJ CHANDRAN
SRI.P.R.AJITHKUMAR

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
2. THE SUB INSPECTOR OF POLICE,
WALAYAR POLICE STATION, WALAYAR, PALAKKAD.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

B.A.No.4819 of 2007

Dated this the 9th day of August 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations in a crime registered under Section 376 I.P.C. The petitioner is a married person, who has a strain in the relationship with his wife and is residing separately. The de facto complainant/prosecutrix is a woman in the neighbourhood. It is her case that blissfully ignorant of his earlier marriage, she believed the statement of the petitioner that he would marry her and that at his invitation on some day in 2005, she went to his house believing that his mother and relatives will be there. When she entered the house, the door was locked and she was forced to have sexual intercourse with the petitioner herein. He promised to marry her. She did not hence make any complaint. They continued their relationship for a long period of time. They allegedly lived together. Thereafter, their relationship got strained. The petitioner allegedly did not stand by his promise to marry her. It is at that stage that the de facto complainant has now raised the complaint of rape against the petitioner. Investigation is in progress. The petitioner apprehends imminent arrest. His application for anticipatory bail was dismissed by the learned Sessions Judge.

2. The learned Public Prosecutor submits that the de facto complainant had come to this court seeking police protection against

the petitioner and a direction for police protection has been issued earlier.

3. The learned counsel for the petitioner submits that the sequence of events eloquently declares that there is no element of rape and the allegations, even if accepted in toto, can only point to a consensual sexual relationship for a long period of time. The petitioner has a further case that the prosecutrix was married to another person and is now living separately on divorce from her husband. She had even attended the marriage of the petitioner, submits the learned counsel for the petitioner.

4. It is unnecessary for me to embark on a detailed discussion on the acceptability of the allegations or the credibility of the data collected. Suffice it to say that on an anxious evaluation of all the relevant inputs, I am certainly persuaded to agree that this is an eminently fit case where the extraordinary equitable discretion under Section 438 Cr.P.C can and ought to be invoked in favour of the petitioner. Appropriate directions can be issued in the interests of a fair, efficient and expeditious investigation.

5. In the result, this petition is allowed. Following directions are issued under Section 438 Cr.P.C in favour of the petitioner.

i) Petitioner shall surrender before the learned Magistrate having jurisdiction at 11 a.m on 16/8/2007.

ii) He shall be released on regular bail on condition that he

executes a bond for Rs.50,000/-(Rupees fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

iii) The petitioner shall make himself available for interrogation before the investigating officer between 10 a.m and 4 p.m on 17/08/2007 and 18/8/2007. During this period, the investigator shall be entitled to interrogate the petitioner in custody. Medical examination of the petitioner can be conducted also during this period. Thereafter the petitioner shall make himself available for interrogation on all Mondays and Fridays between 10 a.m and 12 noon for a period of forty five days and subsequently as and when directed by the investigating officer in writing to do so.

(iv) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law, as if these directions were not issued at all.

(v) If he were arrested prior to 16/8/2007, he shall be released from custody on his executing a bond for Rs.50,000/- (Rupees fifty thousand only) without any sureties, undertaking to appear before the learned Magistrate on 16/08/2007.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007